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Supreme Court of the United States

OCTOBER TERM, 1962.

No. 91

IVAN C. McLEOD, REGIONAL DIRECTOR FOR THE SECOND REGION OF THE NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

EMPRESA HONDURENA DE VAPORES, S.A.

No. 93

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

vs.

EMPRESA HONDURENA DE VAPORES, S.A.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR EMPRESA HONDURENA DE VAPORES, S.A.

ORISON S. MARDEN,
Attorney for Respondent, Empresa Hondurena de Vapores, S.A.
14 Wall Street,
New York 5, New York.

Of Counsel:
CHESTER BORDEAU,
WILLIAM D. CONWELL,
CHARLES NELSON BROWER,
WHITE & CASE.

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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Constitutional Provisions and Statutes Involved.

The constitutional provisions and statutes involved are set forth in Appendix A, pages 58 to 65.

Questions Presented.

1. Whether the Labor Management Relations Act, 1947 (LMRA) (29 U. S. C. §§141, *et seq.*) extends to the organizational and collective bargaining activities of unlicensed seamen:

(a) who are all Honduran citizens except one, a Jamaican citizen;

(b) who are employed in the Republic of Honduras, under shipping articles executed in Honduras, by a Honduran corporation whose stock is owned by an American corporation;

(c) who man seagoing vessels owned and/or operated by the Honduran corporation, which are engaged in regular sailings in foreign commerce between the United States and Honduras and other Latin American ports and which fly the flag of, and are registered in, the Republic of Honduras and are time chartered to the American corporation; and

(d) who are represented by a Honduran labor union which is their exclusive bargaining representative under Honduran law.

2. Whether the action of the National Labor Relations Board (Board) in directing the representation election among these unlicensed seamen violated certain provisions of the Constitution of the United States.

3. Whether the United States District Court for the Southern District of New York had the jurisdiction and power to enjoin the representation election ordered by the Board.

Statement of the Case.

On November 15, 1961, the Board filed a Decision and Direction of Election in which it directed that a representation election be held among the foreign unlicensed seamen employed aboard Honduran flag vessels which are owned or operated by Empresa Hondurena de Vapores, S. A. (Empresa), a Honduran corporation (R. 9-20; 134 NLRB No. 25).

On December 12, 1961, Empresa brought this action in the United States District Court for the Southern District of New York (R. 1-8) to enjoin petitioner Ivan C. McLeod (McLeod), the Board's Regional Director, from carrying out the Board's order (R. 9-20). Empresa's motion for a preliminary injunction was denied by the District Judge, Honorable Edmund L. Palmieri, on December 16, 1961 (R. 46-52). The petitioner in No. 93, National Maritime Union of America, AFL-CIO (NMU) was allowed to intervene on the argument of Empresa's motion before Judge Palmieri.

Neither petitioner filed any affidavit in opposition to Empresa's motion, nor was any answer filed. McLeod, however, moved to dismiss the complaint on the grounds that the District Court lacked jurisdiction over the subject matter of the action; that plaintiff sought premature judicial relief; that the court lacked jurisdiction over the members of the Board claimed to be indispensable parties to the action; and that the Board's assertion of jurisdiction and its Decision and Direction of Election were proper (R. 45-46). This motion was in effect denied by Judge Palmieri's decision to accept jurisdiction of the action (R. 50); it was formally denied following entry of the order of the Court of Appeals (R. 86-87).

On Empresa's appeal to the United States Court of Appeals for the Second Circuit, that court reversed and, in an opinion by the Honorable Henry J. Friendly dated January 12, 1962, held Empresa entitled to the relief requested (R. 60-84). An order enjoining the election was entered on February 15, 1962 (R. 87).

On June 11, 1962, petitions for writs of certiorari to the Court of Appeals for the Second Circuit were granted by this Court, without opposition (R. 88; 370 U. S. 915).

Facts.

The essential facts are not in dispute. They are set forth in the complaint (R. 1-8). No affidavits disputing the factual allegations of the complaint were submitted by either petitioner in opposition to Empresa's motion for a temporary injunction nor was any answer to Empresa's complaint filed.[1]

Empresa is a corporation duly organized in 1941 under the laws of the Republic of Honduras with its principal office and place of business in Puerto Cortes, Honduras. Its principal business is owning and/or operating 13 seagoing vessels which are registered under the laws of Honduras, fly the Honduran flag, and are manned by unlicensed seamen employed in Honduras by Empresa under shipping articles executed in Honduras (R. 1).

All but one of these seamen are citizens of Honduras. The one non-Honduran citizen is a Jamaican. At the time of the making of the motion for an injunction Empresa

[1] In its brief, NMU has gone outside the record before this Court by referring to the proceedings before the Board, which record was not before the courts below. If such references are accepted by the Court, Empresa respectfully refers to Appendix B to this brief.

employed approximately 335 unlicensed seamen. All of these seamen, with 4 possible exceptions, were also residents of the Republic of Honduras (R. 4).

Empresa is a wholly owned subsidiary of United Fruit Company (UFCO), a New Jersey corporation. However, none of its officers or directors is employed by or is associated with UFCO and since its formation in 1941 all of its officers and directors have resided in Honduras (R. 2).

Empresa owns ten of the seagoing vessels which it operates. It acts as agent for Balboa Shipping Company Inc., a Panamanian subsidiary of UFCO, in the management of three additional vessels which are owned by Balboa Shipping Company Inc. These thirteen vessels are presently time chartered to UFCO and call at various ports in Central and South America, the United States, Canada and Europe. All of them call regularly at Honduran ports for trade and renewal of Ship's Articles. Each vessel is registered under the Honduran flag. Empresa has never owned or operated American flag ships (R. 2-3).

Existing collective bargaining agreement with Honduran union.

Since 1941 the unlicensed seamen employed by Empresa have been represented by Sociedad Nacional de Marineros de Honduras (Sociedad), a Honduran labor union recognized by the Republic of Honduras under the Honduran labor law as their collective bargaining agent. Collective bargaining agreements have been in effect between Empresa and Sociedad since 1942. The agreement now in effect is dated March 29, 1957. With certain adjustments as to wages and related matters, this contract has been in effect at all times since said date and has been renewed

by its terms until February 15, 1963 (R. 4).[2] The Spanish original and translation are annexed to the complaint but only the translation has been printed. Among the pertinent provisions of this agreement (R. 22-35) are these:

> 1. Sociedad is organized and existing under the laws of the Republic of Honduras with its head office in Puerto Cortes, Honduras, and was recognized as a juridic person by the Minister of Interior, Justice, Sanitation and Public Welfare of Honduras under date of May 17, 1940.
>
> 2. Empresa is organized and existing under the laws of Honduras with its head office in Puerto Cortes and was recognized as a juridic person by the Minister of Interior, Justice, Sanitation and Public Welfare of Honduras under date of March 28, 1941.
>
> 3. Both the President of the Board of Directors of Sociedad and the President of the Board of Directors of Empresa reside in Honduras (R. 22).
>
> 4. Empresa recognizes Sociedad
>
> "as the sole representative of all seamen employed or to be employed on board the Honduran flag ships owned by, operated by, or for which the Company [Empresa] is agent, in all things pertaining to conditions of employment with the Company, or to the disputes, or controversies that may arise between said seamen and the Company regarding conditions of work on board the vessels or to the stipulation of this contract. Consequently all members of the Association [Sociedad] that may be employed on the Company's ships shall be subject to and must comply with the stipulations of this contract." (R. 23)

[2] The Board erroneously assumed that this collective bargaining agreement expired in April 1961 (R. 17, Fn. 23). However, the uncontradicted record before this Court shows that the agreement will remain in effect at least until February 15, 1963 (R. 4).

5. The employment by Empresa during the term of the contract only of seamen who are members of Sociedad except where Sociedad is unable to furnish such seamen. (R. 23)

6. Empresa's obligation to continue to pay members of the crew whenever Empresa's ships are in a foreign port stranded or under repairs or being cleaned or for other reasons, the salary provided for in said contract and to furnish such seamen with room and board. (R. 24)

7.

"Every member of the association [Sociedad] who is a member of the crew of any of the Company's [Empresa] ships shall at all times be under the orders of the Captain whose instructions and those of the officers of the ship he shall obey at all times. The Company [Empresa] may at any time dismiss any member of the crew whose services or conduct, in the judgment of the Company [Empresa], may not be satisfactory, or if he should disobey the orders of the Captain and any other Officers of the ship, or for insubordination or disregard of the ship's discipline, without prejudice to other responsibilities to which he may be liable. * * * Any member of the crew who considers that he has been unjustly dismissed may appeal the matter direct to the management of the Company [Empresa]. If the matter is not satisfactorily settled on this level, in such event, the matter shall be considered a dispute and must be handled and disposed of in the manner provided for in Article 11 of this contract." (R. 25)

Article 11 (R. 27) provides that during the term of the contract there shall be no lockout by Empresa, no declaration of strikes or suspension of work by Sociedad or its members "on account of labor controversies or for any other causes". It provides that any such disputes or differences shall be resolved by

arbitrators who, in case of discord, may appoint a third arbitrator and, upon the failure of the arbitrators to name a third "in that case the Commandant of the Honduran port of arrival of the ship shall make the appointment". It is provided that the decision of the arbitrators shall be final and binding on the parties and that there shall be no appeal whatsoever.

It is also provided therein:

> "Any dispute arising during the voyage of a ship, shall be resolved in the manner prescribed in this article as soon as the vessel reaches a Honduran port, but if the vessel is not returning to Honduras within a term of 60 days, then the dispute shall be submitted abroad to the decision of the Official or person designated by the Government of Honduras for that purpose, and his decision shall have the same final effect as the decisions of the aforesaid arbitrators of fact." (R. 27).

8. Provisions for the payment of compensation for any loss of life or temporary or permanent incapacity of any seaman while the contract is in effect resulting directly from a maritime labor accident. The compensation is to be made in accordance with Title XI of the Organic Law of the National Merchant Marine of Honduras (Decree No. 55 of March 3, 1943). It is further agreed that the accidents contemplated by this clause are those defined by Article 35 of said Law as maritime labor accidents. (R. 25-26)

Provision for the payment by Empresa for the cure, medical attention or hospitalization of any seaman temporarily incapacitated and left in port. (R. 26)

9. Termination of employment of a seaman upon the termination of a ship's voyage when Sociedad notifies Empresa in writing that he is not an active member of Sociedad.

10. Wages (R. 27, 28, 29)

11. Vacations (R. 29-30)

12. Payments for medical, surgical, pharmaceutical and hospital expenses in the event of nonoccupational and nonculpable illness and in the case of occupational illness. (R. 30-31)

13. Repatriation in case of illness, injury, discharge, shipwreck or for any other causes. (R. 31)

14. Hours of work. (R. 31-32)

15. Overtime rates of pay. (R. 33)

All of the unlicensed seamen employed by Empresa are members of Sociedad, as required by paragraph 3 of the agreement (R. 5, 23). Under Honduran law Empresa is required to recognize Sociedad as the exclusive bargaining agent of its unlicensed seamen (R. 5).

Labor grievances concerning the unlicensed seamen employed by Empresa are handled by representatives of Empresa and Sociedad, including referral of such grievances to the Public Solicitor of the Ministry of Labor of Honduras, the Labor Courts of Honduras and to the Minister of Labor of Honduras (R. 5).

Labor and Maritime Laws of Honduras

The Republic of Honduras has a long established and comprehensive system of laws and regulations governing all aspects of the ownership and operation of vessels registered in Honduras and the employment of personnel thereon. Empresa is required to and does comply with these laws and regulations (R. 3, 4). Thus

a. Each such vessel is required to carry on board a "Patente Definitiva de Navegacion" ("Patente") issued by the Republic of Honduras under signature of the Port Commandante of its home port (Puerto

Cortes or Tela) evidencing ownership of said vessel. Such ownership is also inscribed in the Registry of Sea-going Vessels maintained by the Port Commandante.

Prior to the issuance of each Patente the owner must file in accordance with the requirements of the laws of the Republic of Honduras an application with the Republic of Honduras at Tegucigalpa enclosing with the application the bill of sale proving ownership of the vessel and must comply with certain other requirements under Title 2, Ley Organica de la Marina Mercante Nacional (1943).

b. Each such vessel is required to carry on board a safety equipment certificate issued by the Republic of Honduras, a navigation license, navigation log, crew roll, cash book, cargo book, compass log, tonnage certificate, load line certificate, charter party and a copy of the Commercial Code of Honduras and, if it carries radio equipment, the ship's station must be licensed by the Republic of Honduras and employ call letters and frequencies assigned by the Republic.

c. The officer personnel employed aboard such vessels must be licensed by the Honduran Government.

d. All unlicensed seamen in order to secure employment on such vessels of Honduran Registry are required to furnish a birth certificate, a Honduran passport, a Honduran seaman's identification book, the issuance of which is governed by Articles 56-64 of the Honduran Merchant Marine Act, and Articles 236-7-8 of the Honduran Labor Code, a certificate of military inscription and a vaccination certificate. All unlicensed seamen are required to undergo physical examination by a physician and must secure a medical certificate signed by this physician and a Honduran health official.

e. Each such seaman is required, before he leaves Honduras, to sign the Ship's Articles maintained in accordance with Article 24 of the Honduran Merchant Marine Act which lists the name of each seaman, his age, marital status, place of birth, nationality, domicile and name and address of next of kin. The Ship's Articles are certified by the Port Commandante in Honduras (R. 3-4).

f. Labor grievances are processed in the labor courts of Honduras and the Ministry of Labor of Honduras (R. 5)

Under the laws of Honduras, the petitioner NMU cannot gain recognition by the Honduran Government and could not lawfully represent the seamen involved. Articles 490 and 504 of the Honduran Labor Code provide in translation as follows:

"Article 490: No union may be permitted to act as such nor to exercise the functions prescribed to it by law or by its respective by-laws, nor to exercise its rights so long as it does not have recognition of its juridic personality, and may act as such only during the time it is so recognized."

"Article 504: No union may function whose personnel is not composed of at least ninety per cent (90%) of Honduran citizens. No matter what is the form of direction of the union, no alien is eligible for directive posts." (R. 5)

NMU does not have Honduran recognition of its juridic personality and less than 90% of its members are citizens of Honduras (R. 5).

The Board Decision

The Board's assumption of jurisdiction seems to have been predicated on UFCO's ownership of Empresa's stock

and the fact that as time charterer of Empresa's ships UFCO directed movement of the vessels. Thus the Board found that "the Empresa vessels are wholly integrated in UFCO shipping operations" (R. 15) and that

> "UFCO, as the time charterer of the vessels, determines what voyages they shall make, their ports of call, their length of stay in various ports, and what cargoes they shall carry. In exercising its control, UFCO deals directly with the captain of the vessel involved. If it is dissatisfied with the handling of a vessel by its officers or crew or with its mechanical or other condition, it directs its complaints directly to Empresa, which is responsible for making any necessary changes. The ships are used, for the most part, to carry produce of UFCO's Latin American operations, and on any given trip may call at ports in various Central and South American countries including those of Honduras." (R. 14-15)

Yet in almost the same breath the Board recognized that UFCO's control of the vessels was only the typical control of a time charterer,[3] that all labor relations are in fact handled exclusively by Empresa as owner and operator of the vessels, and that UFCO's "control" would be the same whether the vessel was beneficially owned by the charterer or by some third party in which the charterer had no financial interest. Thus the Board found (R. 14):

> "As the owner and operator of the vessels under time charter, Empresa must provide ships that are fully equipped and ready to put to sea. Thus, it is responsible not only for the physical condition of the ships and for provisioning them, except for fuel, but

[3] A time charterer hires a vessel fully manned and ready to put to sea, which vessel is operated and managed by the owner, as distinguished from a bareboat or demise charter in which the charterer hires the vessel and mans it with his own crew. Gilmore and Black, *The Law of Admiralty* (1957) at pp. 170-171.

> also for hiring the officers and crews and handling all matters concerning terms and conditions of employment including payment of wages and discipline of the personnel. There is nothing in the record to suggest that Empresa does not in fact carry out these typical responsibilities of the owner of a vessel under a time charter." (R. 14)

Despite these and other factual findings which clearly established that *all* labor relations aboard the vessels owned and/or operated by Empresa were handled exclusively by it and the Honduran union, Sociedad, pursuant to the labor laws of Honduras, the Board found that the "contacts" of Empresa's vessels with the United States were substantial enough to require application of our labor laws rather than those of Honduras (R. 16-17); it incorrectly assumed (without making inquiry of the parties) that the collective bargaining agreement between Empresa and Sociedad had expired by its terms (R. 17, fn. 23); it concluded that Empresa's sole stockholder, UFCO, having time chartered the vessels, was a joint employer with Empresa of the seamen involved (R. 16); and it ordered that a representation election be held on a ballot which entitled the seamen to elect between NMU, Sindicato Maritimo Nacional de Honduras ("Sindimar"), a Honduran union which the Board permitted to intervene after the hearing had been closed (see R. 17, fn. 22), or no union (R. 18-19).

Sociedad, the Honduran union which represents all of the seamen involved and with which Empresa has an exclusive bargaining agreement entered into pursuant to Honduran law, was not even listed on the ballot! A foreign employer, its foreign seamen aboard its foreign flag vessels in maritime commerce, and their foreign union, though all admittedly subject to the labor laws and regula-

tions of Honduras, the nation of their allegiance and domicile, were thus held also to be subject to the conflicting labor laws and regulations of the United States.

The Board ruling not only requires this foreign employer to breach a lawful collective bargaining agreement with its foreign employees and their foreign union but may also require the employer to further violate the laws of its domicile by bargaining with a union which concededly could not be recognized under Honduran law as the lawful representative of the seamen involved. As the unanimous Court of Appeals found, the Board decision has sown the seeds of continuous conflict between the regulatory measures of the two jurisdictions to which Empresa and its employees have now been held subject (R. 78; 300 F. 2d 222 at p. 234).

Protests by the Honduran Government

On November 29, 1961, after issuance of the Board's order of November 15, 1961, His Excellency Celeo Davila, Ambassador from Honduras to the United States, communicated with His Excellency Dean Rusk, Secretary of State of the United States. A copy of this communication, referred to in the opinion of Judge Friendly below (R. 63-64), is annexed as Appendix C to this brief. Ambassador Davila referred to Articles X and XXII of the Treaty of Friendship, Commerce and Consular Rights between Honduras and the United States, signed at Tegucigalpa, Honduras, on December 7, 1927 [45 Stat. 2618], as follows:

> "Article X of the Treaty provides that merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on

the high seas, be deemed to be the vessels of the Party whose flag is flown.

The National Labor Relations Board by asserting jurisdiction over the Honduran seamen aboard vessels carrying the Honduran flag has violated this provision that considers as vessels of Honduras those flying its flag.

It has also violated Article XXII of said Treaty which reads in part: 'A Consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit'.

The Articles X and XXII of said Treaty are very clear and there is no doubt that wages and contracts are matters dealing with internal order of the vessels, and are therefore subject exclusiveiy to the laws of the State of registry and flag."

On January 10, 1962, the Department of Justice by the Honorable William H. Orrick, Jr., filed the following communication relating to this Honduran note with the Honorable Alexander Holtzoff, United States District Judge, in the action brought by Sociedad against the members of the National Labor Relations Board, the appeal in which is to be argued with the instant cases:

"As a result of your inquiry I have songht to ascertain the views of the Department of State with respect to the Honduran Note of November 29, 1961 attached to the complaint in the above-entitled action [*Sociedad Nacional de Marineros de Honduras* v.

McCulloch, et al. Civil Action No. 4020-61]. The Department of State informs me that, although the Department does not support all the statements in the Honduran Note, it agrees with the conclusion that jurisdiction of the National Labor Relations Board should not attach in this case." (R. 85)

A copy of this communication was filed with the Court of Appeals (R. 64, 85).

On December 8, 1961, Empresa received from the Government of Honduras an official ruling of its Ministry of Labor to the effect that the action of the Board in this case, in assuming jurisdiction over the respondent and its unlicensed seamen and in directing the election, is a violation of the sovereignty of the Republic of Honduras and null and void under its law (R. 5). A translation of this ruling is attached to the complaint (R. 36-42).

Summary of Argument.

This Court held in *Benz* v. *Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957) that "Congress did not fashion it [the LMRA] to resolve labor disputes between nationals of other countries operating ships under foreign laws" (at p. 143), and that Congress "alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain." (at p. 147).

The difference between the facts at bar and in *Benz* are that the foreign shipowner here is beneficially owned by an American corporation and that here the foreign flag ships upon which the foreign seamen are employed make regular calls to the United States ports. In this case, as in *Benz*, there is a total absence of Congressional intent to apply the LMRA to these foreign ships and foreign seamen. The policy considerations for and against

applying the labor laws of the United States to foreign vessels are far more complex than in *Benz*. The task of resolving these legislative problems to which diverse solutions have been presented by petitioners and *amici curiae* should be left to Congress.

Established canons of statutory interpretation require that in the absence of a clear statement of Congressional intent, an Act of Congress should be interpreted to accord with the law of nations; so as not to abrogate treaty obligations; so as not to apply extraterritorially; and so as not to raise a constitutional question. For hundreds of years the law of nations has required that the internal affairs of seagoing vessels and the general regulation of the rights and duties of the officers and crew towards the vessel and among themselves should be governed by the law of the flag nation. Labor relations are clearly within this well settled principle. A treaty between the United States and Honduras (the flag state here) requires Honduran law to govern the relations between these Honduran seamen and their Honduran employer on these Honduran flag vessels. The absence of a clear expression of Congressional intention to regulate labor management relations on foreign vessels, requires that these principles and our treaty obligations be respected.

If Congress had intended the LMRA to apply, it would have exceeded its powers under Article I, Section 8, and Section 2 of Article II of the Constitution of the United States. Such action also would violate the Fifth Amendment to the Constitution.

The District Court had the power to enjoin the action of the Board since the action of the Board was in excess of its powers under the Act and, moreover, violated respondent's constitutional rights.

ARGUMENT.

POINT I.

The Labor Management Relations Act, 1947, as amended does not extend to the organizational and collective bargaining activities of the unlicensed seamen here involved.

All parties agree that the basic question is whether Congress intended the LMRA to apply to Empresa's foreign flag ships. Despite the universal coverage of its literal language, the legislative hearings and findings show that it was not the purpose of Congress to regulate working conditions on foreign flag ships.

This Court so held in *Benz* v. *Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957), where Mr. Justice Clark stated at pp. 143-144:

> "Our study of the Act leaves us convinced that Congress did not fashion it to resolve labor disputes between nationals of other countries operating ships under foreign laws. The whole background of the Act is concerned with industrial strife between American employers and employees. • • • The report declares further that because of the inadequacies of legislation 'the *American* workingman has been deprived of his dignity as an individual,' and that it is the purpose of the bill to correct these inadequacies. (Emphasis added.) H. R. Rep. No. 245, 80th Cong., 1st Sess. 4. What was said inescapably describes the boundaries of the Act as including only the workingmen of our own country and its possessions."

The ship in *Benz* was owned by a Panamanian corporation and sailed under the Liberian flag. The crew, made

up entirely of nationals of countries other than the United States, principally German and British, had signed a British form of articles of agreement in Germany. The conditions of employment prescribed by the British Maritime Board were incorporated into the Articles of Agreement including wages and hours of employment. While the ship was in the harbor at Portland, Oregon for repairs, to load a cargo of wheat and complete an insurance survey, the crew went on strike aboard the vessel in furtherance of demands for higher wages and more favorable working conditions. The crew was ordered to leave the ship and did so. Thereafter a series of three American unions participated in picketing the ship and injunctions against them were entered by the District Court. In addition to injunctive relief, the employer claimed damages for picketing for an unlawful purpose under Oregon law. The unions contended that the LMRA had preempted the field and therefore that the District Court was without jurisdiction to entertain the suit. The District Court held that the LMRA did not apply because it "is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew", and awarded damages. This Court affirmed. The sole question decided was

> "whether the Labor Management Relations Act of 1947 applies to a controversy involving damages resulting from the picketing of a foreign ship operated entirely by foreign seamen under foreign articles while the vessel is temporarily in an American port. We decide that it does not, and therefore do not reach other questions raised by the parties." (353 U. S. 138 at pp. 138-139)

Mr. Justice Clark, speaking for the Court, held:

> "And so here such a 'sweeping provision' as to foreign applicability was not specified in the Act. • • • We cannot read into the Labor Manage-

ment Relations Act an intent to change the contractual provisions made by these parties. For us to run interference in such a delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed. It alone has the facilities necessary to make fairly such an important policy decision where the possibilities of international discord are so evident and retaliative action so certain. We, therefore, conclude that any such appeal should be directed to the Congress rather than the courts." (at pp. 146-147)

Benz is decisive of the instant case. Here too, the ship is foreign, the employees are foreign and the employer is foreign. While the stock of Empresa is owned by an American corporation there is no indication that Congress intended a different result where American investors acquire interests in foreign enterprises. In *Benz* nothing was said as to the nationality of stockholders of the Panamanian ship owner.

Moreover, the record shows conclusively that Empresa is an independent corporate entity and is in no sense an "instrumentality" of its parent. In fact, the Board so found:

> "Empresa is, as noted, one of UFCO's wholly-owned subsidiaries. It was organized under the laws of Honduras in 1941 by UFCO which supplied the capital for the venture. Empresa's officers are elected by its directors who are in turn elected by the sole stockholder, UFCO. There are, however, no interlocking directors with, or offices common to, Empresa and its parent. Furthermore, Empresa maintains all its own records, holds real estate in its own name, and otherwise *appears to function as a distinct corporate entity*. It is engaged in the business of owning and operating vessels registered under the laws of Honduras" (R. 13) (emphasis added).

As Judge Friendly pointed out, this "subsidiary had been formed long before controversy arose and none of the ordinary bases for piercing the corporate veil exist" (300 F. 2d 222 at p. 233).

The fact that these ships were time chartered by UFCO does not alter the situation. There was no showing of any difference between the chartering of these foreign ships by UFCO and the chartering of any other foreign ships. The time charterer of a vessel always controls the voyages it makes, the cargo it carries, the ports of call, etc. (see Scrutton, *Charter Parties* 280-2 (15th ed. 1958) and fn. 3 on p. 12 hereof). The time charterer always uses the vessel in the course of its regular business operations. Surely it is not contended that our labor laws apply to all foreign flag ships time chartered by American corporations!

So far as this controversy is concerned, the important and conclusive fact is that Empresa has full and exclusive control of labor management relations aboard its vessels. The time charterer, UFCO, has no part whatever in the internal management of these vessels. There is no question that Empresa independently performs all of the functions of an owner of vessels under time charter. The Board so found:

> "As the owner and operator of the vessels under time charter, Empresa must provide ships that are fully equipped and ready to put to sea. Thus, it is responsible not only for the physical condition of the ships and for provisioning them, except for fuel, but also for hiring the officers and crews and handling all matters concerning terms and conditions of employment including payment of wages and discipline of the personnel. *There is nothing in the record to suggest that Empresa does not in fact carry out these typical responsibilities of the owner of a vessel under a time charter*" (R. 14) (emphasis added).

The Board further found that "The crews are hired [by Empresa] in Honduras, are composed almost entirely of citizens of that country, and sign Honduran shipping articles" (R. 14, fn. 15). It also found that "Empresa, as part of its control over personnel, has bargained with a Honduran organization as representative of the crews of its vessels" (R. 14, fn. 16).

Similarly, the fact that these vessels call regularly at United States ports is not significant since it is not contended that the LMRA applies to all foreign vessels which come regularly to the United States (see Board brief page 35). It would therefore appear that in the Board's view the significant difference between these foreign vessels chartered by an American corporation and other time chartered foreign vessels calling regularly at United States ports is the fact that the Honduran corporate shipowner in this case is beneficially owned by an American corporation.

The fact that the stock of this admittedly independently operating foreign corporation is owned by a United States corporation does not alter the conclusions reached in *Benz*. As in *Benz* the "question * * * narrows to one of intent of the Congress as to the coverage of the Act" (353 U. S. 138 at p. 142). Since, as it was held in *Benz*, Congress did not consider the problems involved in applying the Act to foreign seamen on foreign vessels hired by a foreign employer, it obviously did not consider the refinement of those problems presented here—i.e., an independently operating foreign corporate employer beneficially owned by an American corporation. Since what Congress did say "inescapably describe[d] the boundaries of the Act as including only the workingmen of our own country and its possessions" (353 U. S. 138 at p. 144) it is evident that the intent of Congress was not to apply the Act in the situation here presented. The Solicitor General states that

the *Benz* "reasoning is equally applicable to the present cases, and compels the conclusion that the Act similarly does not cover the foreign flag ships here involved." (page 26 of Brief for the United States)

As in *Benz*, the presumption is that Congress did not intend to interfere "in such a delicate field of international relations" unless its "affirmative intention" to do so is "clearly expressed." There is no such clear expression of legislative intent in the Act and this Court has so found.

The decision in *Benz* is in accord with long established canons of statutory construction all of which require an "affirmative intention of the Congress clearly expressed" before an Act of Congress is interpreted in such a manner as to interfere in the field of international relations. These canons, which will now be discussed, are equally applicable here.

A. An Act of Congress Should Be Interpreted in Consonance With the Law of Nations, Which Requires Application of the Law of the Flag.

This fundamental canon of statutory construction is singularly appropriate in the field of admiralty where long recognized principles of the law of nations prevail.

In its brief the Board explicitly recognizes the force of the canon:

> "However, even where the scope of a domestic statute is such that it can be applied to vessels flying the flag of another nation, general principles of maritime law and international comity require that an accommodation be made so as to minimize the possibility of collision between two sovereignties, each applying its own laws to the transaction" (p. 25).

Similar recognition is given, in NMU's brief (p. 37). As stated by Mr. Justice Jackson in *Lauritzen* v. *Larsen*, 345 U. S. 571, 577 (1953) a Jones Act case:

> "By usage as old as the Nation, such statutes [shipping] have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law."

A multiplicity of nations normally have interests in vessels flying the flag of a single nation. The nation under whose laws the vessel is registered has an interest in protecting the vessel; national prestige is involved and the vessel produces revenue through registration fees, may be requisitioned in wartime and may provide employment for nationals of the flag state. The nation of which the owner of the vessel is a citizen will wish to protect the investment of its national. If the vessel is under charter the nation of the charterer may have a similar interest. The nation whose citizens are employed on the vessel is interested in the welfare of its nationals, and every nation into whose ports a vessel sails has interests in the vessel.

The Republic of Honduras has a substantial and compelling interest in the welfare of its citizens employed on these ships, registered under its laws, exporting its chief produce, and owned by a corporation chartered under its laws, whose main office is in Honduras and whose officers and directors reside there. The extent of that interest is evidenced by the official protests which have been filed by the Honduran government.

Over the years a substantial body of law has developed in reconciling these often conflicting interests, and this Court has long recognized this law of nations. As stated by Mr. Chief Justice Marshall in *Schooner Exchange* v. *M'Faddon*, 11 U. S. (7 Cranch) 116, 137 (1812):

> "A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world."

In *The Charming Betsy*, 6 U. S. (2 Cranch) 64, 118 (1804) Mr. Chief Justice Marshall stated the rule as follows: "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country."

1. *Our Courts apply the law of the flag as required by the law of nations.*

One of the most fundamental principles of the law of nations applicable to ships is that the law of the flag governs the internal management and discipline of the ship. The principle, which this Court has held to be of "cardinal importance" (*Lauritzen* v. *Larsen*, 345 U. S. 571, 584) was early recognized in *Wildenhus's Case*, 120 U. S. 1, 12 (1887) in which Mr. Chief Justice Waite stated:

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity

> of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require."

Accord: *St. Clair* v. *United States*, 154 U. S. 134, 152 (1894); *United States* v. *Flores*, 289 U. S. 137, 156-157 (1933).

In *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354 (1959), Mr. Justice Frankfurter stated the practical necessity for applying the law of the flag:

> "To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country." *Id.* at p. 384.

Application of the LMRA to the vessels involved in this case without any question would interfere with (in the words of Mr. Chief Justice Waite in *Wildenhus*) the "internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves." The scope of regulation set forth in the LMRA clearly regulates matters long considered "internal discipline of the ship". *McQuade* v. *Compania de Vapores San Antonio, S.A.*, 131 F. Supp. 365 at p. 366 (S. D. N. Y. 1955), holding that seamen's contracts are treated as "matters of internal order or economy"; *Evangelinos* v. *Andreavapor C.I.A.*, 162 F. Supp. 520 at p. 521 (S. D. N. Y. 1958), stating "the general rule as to what law governs matters of the 'internal economy' of a ship, such as wages, is that the law of the flag controls"; *The Hanna Nielsen*, 273 F. 171 (2d Cir.), *cert. dismissed* 257 U. S. 651

(1921), holding that a seaman's contract is governed by the vessel's nationality; and, similarly, *Transportes Maritimos Do Estado v. Almeida*, 5 F. 2d 151 (2d Cir. 1925). See also the British cases discussed in *The Belgenland*, 114 U. S. 355 (1885) holding that seamen's wages are governed by the law of the flag country.

The brief submitted on behalf of the United States graphically points out that because of the "essentially integral character of such relations, only one jurisdiction can effectively regulate the problems of union organization and collective bargaining in a single bargaining unit" (p. 32). The United States urges that in this case to avoid "potential clashes" between sovereign nations, the law of the flag should govern these relations (pp. 33-37).

In the case at bar, application of flag law is required by Articles X and XXII of the Treaty betwen Honduras and the United States (*infra*, pp. 64-65). As this contract between the two nations is in full force and effect (as both nations have certified in the record here), the treaty provisions are the supreme law of the land and must be honored and applied wherever appropriate by the courts and administrative agencies of the United States.

2. *Other nations also apply flag law.*

Many of the maritime nations have comprehensive labor laws. (Canada, England, France, Germany, Italy, Netherlands, Norway, Honduras, Panama and others). No case has been found, however, in which any nation (other than the United States) has attempted to apply its labor laws to foreign flag vessels.

In fact Canada has expressly refrained from doing so. *Seafarers' Int'l Union of North America (Applicant) and Iron Ore Transport Co. (Respondent) and National Union of Seamen (Intervenor)*, CCH *Canadian*

Labour Law Reporter (1955-1959) 12,130, No. 16,075, April 3, 1957. In this case the Canadian Labor Relations Board expressly refused to take jurisdiction of a labor dispute arising on vessels owned by Canadians but registered in the United Kingdom. The Board based its decision on the principle that the law of the flag governs matters of internal management, discipline, and relations between master and crew and that labor relations are included within the concept "internal management" and "relations between the master and crew". Canada's labor laws are similar in many respects to those of the United States. Cf. Canada's *Industrial Relations and Disputes Investigation Act*, Can. Rev. Stat. c. 152 (1952), establishing the Canada Labor Relations Board which has duties similar to those of the National Labor Relations Board.

The principles of international law upon which the Canadian Board relied are uniformly upheld by writers in the field of international and martime law. Cf. Colombos, *International Law of the Sea*, Sec. 343 *et seq.*, (4th Ed., 1959); Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927), page 191 *et seq.* See also the resolution adopted by the Institute of International Law, Amsterdam 1957, Resolution No. IV, Annuaire, Vol. 47 (1957); and the United Nations Conference on the Law of the Sea, Geneva 1958, Article 19.

When other nations do apply their laws to foreign flag vessels, the laws applied are clearly laws which do not pertain to the internal order of the vessel, such as criminal laws and maritime laws concerning salvage, pilotage, collision, harbor safety, etc. See e.g. 35 Halsbury, *Laws of England* 17 (3d ed. 1961); Judgment of 12 June 1952, France, Cour de Cassation (Ch. crim.), 80 *Journal du Droit International* 379; *In re Fattori*, Italy, Court of Cassation (Crim. sect.) (1948), 1949 *International Law Reports* 143;

Procurator General v. *A and D*, Holland, Court of Cassation (1948), 1948 *International Law Reports* 114; *Re Bianchi*, Argentina, Camara National Especial (1957), 1957 *International Law Reports* 174.

The Government of France has even refrained from applying its penal laws to offenses committed in its ports on foreign flag vessels. The French Conseil d'Etat in 1806, in the case of *The Sally* and *The Newton*, refused to apply its penal laws to offenses committed aboard American ships in French ports. The court held that it would not interfere in the internal matters of a foreign flag vessel unless the offenses compromised the tranquility of the port. This illustration of France's strict adherence to the traditional attitude of restraint toward the regulation of internal affairs on foreign flag vessels was recently reaffirmed by a decision of the French Court of Cassation (Chambre Criminelle, 1952), 80 *Journal du Droit International* 379. In another recent case, the French court expressly refused to apply its labor laws to a dispute between a French employee and a French company whose registered office was in Vietnam. *Vidal* v. *Societe Lucien Berthet et Cie*, Tribunal de Grande Instance de la Seine (1960), 88 *Journal du Droit International* 410. The court based its decision on the following factors: foreign registry of the company, performance abroad, contract concluded in Saigon, salary calculated in Indo-Chinese currency. Though no case was found in which a French Court has dealt with the applicability of French labor laws to foreign flag vessels, it would appear from the factors emphasized in the *Vidal* decision that France would not apply its labor laws to foreign flag vessels.

There is no indication that Congress intended the Board to depart from established principles of international law

and to interfere in affairs which, under the law of nations, are clearly the concern of Honduras.

B. An Act of Congress Should Be Construed So As Not to Abrogate a Prior Treaty Unless the Intent of Congress To Do So Is Clearly Expressed; the Board's Construction of the LMRA Would Violate the Honduran Treaty.

On December 7, 1927 a "Treaty of Friendship, Commerce and Consular Rights" was entered into between the United States and the Republic of Honduras (45 Stat. 2618-2640 [1929]). Article X thereof provides:

> "Merchant vessels and other privately-owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

And Article XXII provides:

> "A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit."

The treaty clearly and explicitly incorporates by its terms the principles of law of the flag and the internal order doctrine discussed hereinabove. Since, as has been

demonstrated, labor relations are unquestionably within the doctrine, and the doctrine is incorporated within the treaty, an assertion of Labor Board jurisdiction on the facts of this case is in clear violation of the terms of the treaty.

Petitioners allege that application of the Act on board these vessels would not interfere with their "internal order". Yet it could result in the election of an American labor union as bargaining representative for these Honduran seamen (in contravention of Honduran law) and inevitably would result in the imposition upon the shipowner of a duty to refrain from committing unfair labor practices as defined not by Honduran but by American law. As a result entirely new terms of employment judged according to American law would supersede the present terms which are governed by Honduran law. In short, the law governing the relations of seamen and shipowner (certainly an integral part of the "internal order" of the vessel) would be changed from Honduran law to American law. Empresa and its employees would be whipsawed between the conflicting labor laws of two nations.

The Republic of Honduras, in the Note submitted by its Ambassador to the United States, has construed its treaty with the United States as recognizing Honduras' exclusive jurisdiction over the labor relations on board its ships. The Government of the United States has taken the same position in the briefs which it filed with the Board and with this Court (Brief of the United States, p. 43-44).

In *Cook* v. *United States*, 288 U. S. 102, 120 (1933), this Court held that "a treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed." See also *Choate* v. *Trapp*, 224 U. S. 665 (1912).

There has been no suggestion of an intention by Congress to abrogate or modify this treaty by the labor legisla-

tion here involved or by any other statute. In fact, neither the Honduran nor any other treaty is mentioned in the legislative history of the Act.

C. When Congress Has Intended To Legislate With Reference to Foreign Flag Vessels It Has Done So Expressly; No Such Intention Is Expressed In the LMRA.

A consideration of other federal statutes affecting maritime affairs indicates that Congress, when it has intended to apply its enactments to foreign flag vessels, has so provided in clear and explicit language.

The Seamen's Act of March 4, 1915, 38 Stat. 1164, 1169, 46 USC §599(e), which forbids the payment of seamen's wages in advance, extends by its terms to "foreign vessels while in waters of the United States." This Court has interpreted that statute as not applying to a case where "the contract and payment were made in a foreign country where the law sanctioned such contract and payment." *Sandberg* v. *McDonald*, 248 U. S. 185, 195 (1918); *Jackson* v. *S.S. Archimedes*, 275 U. S. 463 (1928). Likewise the 1920 amendment of §4 of the Seamen's Act, 41 Stat. 1006, 46 USC §597, which granted to every seaman on a vessel of the United States the right to demand one-half of his then earned wages at every port the vessel entered during the voyage, was made specifically applicable to "seamen on foreign vessels while in harbors of the United States," with an additional promise that "the courts of the United States shall be open to such seamen for its enforcement." This latter provision was upheld by this Court in *Strathearn Steamship Co.* v. *Dillon*, 252 U. S. 348 (1920).

Similar precision with respect to application to foreign flag vessels is found in numerous other federal maritime regulatory statutes, including the Steamboat Inspection

Act, 46 U. S. C. §§361-367, the Dangerous Cargo Act, 46 U. S. C. §§170-170b, the Load Lines for American Vessels Act, 46 U. S. C. §§85-88i, the Passenger Act, 46 U. S. C. §§151-163, regulations as to lifesaving appliances, 46 U. S. C. §481, cargo vessel passenger limits, 46 U. S. C. §882, and the Officers' Competency Certificates Convention, 46 U. S. C. §224a.

In all of these statutes Congress has specified whether the statute applied only to American flag vessels or to foreign flag vessels destined for United States ports, as well. As to foreign flag ships Congress has regulated only those aspects of the operation of such ships which are susceptible of local regulation without interfering with concurrent regulations of the flag country or other ports of call. *In none of these instances has Congress presumed to regulate continuously or generally the operation or administration of foreign flag vessels*, as would the Board order here. In view of the historical reluctance of Congress to assume full regulatory jurisdiction of foreign flag vessels it would not be proper to assume, in the absence of a clearly expressed affirmative intention to the contrary, that Congress intended the Act to apply to the situation here presented.

D. In the Absence of a Clear Expression of Congressional Intent to the Contrary, Legislation Is Presumed Not to Apply Extraterritorially.

The application of United States labor law to Honduran seamen, employed by a Honduran corporation with its main base of operations in Honduras, working aboard sea going vessels flying the flag of Honduras, and subject to regulation by Honduran labor law, constitutes an extraterritorial application of United States law.

In many cases courts have construed federal regulatory statutes as not applying even to American citizens or enterprises abroad. The *Apollon*, 9 Wheat. 362, 370-72 (1824); *Brown* v. *Duchesne*, 19 How. 183, 195 (1856); *Sandberg* v. *McDonald*, 248 U. S. 185, 195 (1918); *New York Cent. RR* v. *Chisholm*, 268 U. S. 29, 31 (1925); *Jackson* v. *SS. Archimedes*, 275 U. S. 463, 467 (1928). In view of Congress' demonstrated reservations about asserting jurisdiction over even our own citizens and businesses abroad it would be presumptuous in the extreme to interpret such legislation to apply generally to foreign vessels and their foreign crews.

In *Benz*, Mr. Justice Clark pointed out that the problems involved in the application of its laws extraterritorially "is not a new one to the Congress." He outlined the history of the Seamen's Act of 1915 in which Congress made it unlawful to pay a seaman wages in advance and specifically declared it applicable to foreign vessels while in United States waters. He referred to the decision in *Sandberg* v. *McDonald*, 248 U. S. 185 (1918) in which this Court held that that Act did not apply to wages paid in a foreign country because the Act was "presumptively territorial" and there was no declared policy to apply it extraterritorially, and quoted from the opinion by Mr. Justice Day:

> "Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication." at p. 195.

The decision in *Benz* rests upon a number of other cases involving similar questions in which this Court has held that in the absence of the clearly expressed intention of Congress that legislation shall apply extraterritorially, it will be held not to so apply (e.g. *Neilson* v. *Rhine Shipping Co.*, 248 U. S. 205 (1918); *Strathearn Steamship Co.* v. *Dillon*, 252 U. S. 348 (1920); *Jackson* v. S.S. *Archimedes*, 275 U. S. 463 (1928)).

In *Foley Bros.* v. *Filardo*, 336 U. S. 281 (1949) this Court held that the Eight Hour Law (40 U. S. C. 324) did not apply to an American citizen working for an American contractor in a foreign country even though the terms of the Act were literally universal. Mr. Justice Reed said:

> "No distinction is drawn therein between laborers who are aliens and those who are citizens of the United States. Unless we were to read such a distinction into the statute we should be forced to conclude, under respondent's reasoning, that Congress intended to regulate the working hours of a citizen of Iran who chanced to be employed on a public work of the United States in that foreign land. • • • *An intention so to regulate labor conditions which are the primary concern of a foreign country should not be attributed to Congress in the absence of a clearly expressed purpose.*" (at p. 286) (emphasis added).

Labor relations aboard the vessel here involved are obviously "the primary concern" of the Republic of Honduras. The LMRA does not provide for regulation of such relations extraterritorially and hence does not authorize such regulation.

E. A Statute Should Be Construed In Such A Manner As Not To Raise A Constitutional Question.

In *Crowell* v. *Benson*, 285 U. S. 22 (1932) at p. 62, Mr. Chief Justice Hughes held:

> "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."

If Congress should be held to have intended the Act to apply to foreign seamen on foreign flag ships owned by a foreign corporation, there would be serious doubts as to its constitutionality. Point II, hereinafter, discusses certain provisions of the Constitution which militate against such extraterritorial legislation.

F. Board and NMU Contentions

1. *Subsequent enactment by Congress of §14(c)(1) of the Act was not an expression of intention to apply the Act in this situation.*

The Board contends that the subsequent enactment by Congress, of Section 14(c)(1) of the Act (29 U. S. C. §164(c)(1)) in 1959, after the *Benz* decision, indicates a Congressional intent to apply the LMRA to foreign vessels manned by foreign seamen. Section 14(c)(1) provides:

> "The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employes, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the

> Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959."

This Section was concerned solely with the problem of delineating the jurisdictional boundaries between state and federal labor laws. There is nothing in the legislative history to indicate that Congress was concerned with the foreign flag problem. In House Report No. 741, Senate Report No. 187, and Conference Report No. 1147, Congress made clear that it was exclusively concerned with the problem of the so-called "no man's land" which comes into existence when the Board exercises its discretion to decline jurisdiction and at the same time State courts and agencies are foreclosed from asserting jurisdiction due to Federal pre-emption. See U. S. Code Congressional and Administrative News, 86th Cong., 1st Sess. pp. 2320, 2341, 2371, 2377, 2424, 2440, 2494 and 2509 (1959).

3. *The decision in the* Marine Cooks *case did not limit the decision in* Benz.

The Board also suggests that this Court limited its holding in *Benz* by its decision in *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U. S. 365 (1960). In that case this Court held that the Norris-LaGuardia Act (29 U. S. C. §§101, 104) deprived the Federal Courts of jurisdiction to enjoin picketing of a foreign flag vessel while temporarily in a United States port. However Mr. Justice Black pointed out the relevant basic differences between the Norris-LaGuardia Act and the LMRA:

> "Congress passed the Norris-LaGuardia Act to curtail and regulate the jurisdiction of courts, not,

> as it passed the Taft-Hartley Act, to regulate the conduct of people engaged in labor disputes." 362 U. S. 365 at p. 372.

The decision in *Marine Cooks* in no way alters the holding in *Benz*.

3. *The economic and public policy arguments advanced by petitioners are more properly addressed to Congress.*

In its brief the Board outlines various cases in which it has applied the LMRA to "shipping operations having foreign aspects". It is submitted that the Board in these cases has substituted its judgment of what is in the public good for that of Congress. Policy arguments as to whether the LMRA should apply to this type of situation are inappropriate here. As Mr. Justice Jackson stated in *Lauritzen* v. *Larsen*, 345 U. S. 571 (1953) at p. 593:

> "Nor do we stop to inquire which law does whom the greater or the lesser good. The argument is misaddressed. It would be within the proprieties if addressed to Congress. Counsel familiar with the traditional attitude of this Court in maritime matters could not have intended it for us."

A major problem which would confront Congress in deciding whether it was in the public interest to apply the regulatory scheme of the LMRA in the instant situation is one of international relations.[4] Since under international law the flag state has the exclusive right to govern the labor relations on foreign flag vessels, it is an affront to the sovereignty of the flag state for another nation to assume

[4] It is not without significance that five friendly nations (Canada, Honduras, Liberia, Panama and the United Kingdom of Great Britain and Northern Ireland) have submitted *amicus curiae* briefs in these foreign flag cases.

jurisdiction. In the instant case Honduras has emphatically protested this violation of the law of nations and of explicit treaty provisions.

The problem here is far more serious than it was in *Benz* because the connection of Honduras with these ships, these seamen, and this employer is far closer than the connection of Panama or Liberia with the seamen, employer and ships in *Benz*. The Board order is a most serious affront to the dignity and prestige of a friendly foreign power. The strong protest filed by the Honduran Government and the *amicus curiae* briefs filed by other friendly nations, coupled with the position taken by the Solicitor General of the United States on behalf of the Executive Branch of our Government, give some indication of the serious nature of that affront and of the retaliatory measures which are likely to follow if the Board's order is sustained. (See Brief of the United States pages 7-8, 133-37.)

Moreover, the economy of Honduras is based to a very great extent on the growing and exporting of bananas. Much of the crop is exported on Honduran vessels owned and or operated by Empresa, a Honduran corporation employing Honduran seamen in Honduras. It is appropriate, and, from the standpoint of the Honduran Government, highly desirable that the ships which carry this product should be of Honduran registry, that these ships should be owned by a Honduran corporation and that the seamen on these ships should be Honduran. It is also important to the Honduran Government that the labor relations on such ships should be governed by Honduran law. In these ways the export of its perishable crop is provided for, its citizens are receiving employment and desirable training at sea, and Honduras has become a maritime nation. The consequences to the Government and people of

Honduras of an interruption in the export of its fruit products would be serious. The injection of an American administrative agency, an American union and American labor laws into the labor-management relations on board these ships could have a serious effect on the Honduran economy.

Petitioner NMU states that the vessels have only "symbolic and peripheral Honduran contacts" (p. 14 NMU brief) and further that "In determining the jurisdictional reach of the LMRA, the possibility of conflict with Honduran laws is irrelevant, in addition to being remote and inconsequential" (p. 14 NMU brief). Such a cynical disregard of the legitimate concern of the Republic of Honduras with the export of her major product and the maintenance of her own merchant marine should not be countenanced without an express declaration of Congressional intent.

Moreover, in contrast to the relatively simple situation in *Benz*, the entire complex of regulations contained in the LMRA is sought to be imposed upon this essentially Honduran enterprise, in substitution for the Honduran laws and regulations to which Empresa, its vessels and its employees are now subject and will continue to be subject. As Judge Friendly pointed out:

> "As Mr. Justice Douglas pointed out in his dissent, the Benz case did not directly involve the application of the panoply of labor regulation embodied in §§7, 8, 9 and 10, but only the provisions of §303 of the Taft-Hartley Act relating to picketing, there wholly on American soil; it is hard to believe that foreign governments would be, or under international practice would have any right to be, concerned with whether the rights of their ships to damages for such picketing were governed by Federal or state law. Here, on the other hand, application of §§7, 8, 9 and 10 of the National Labor Relations Act would involve the risk of continuous conflict

> between the United States and Honduras with respect to labor conditions which, though of more interest to the United States than those in Benz, are still Honduras' 'primary concern' * * * *" (R. 76-77, 300 F. 2d 222 at p. 234).

and continuing:

> "* * * the conflict between United States and Honduran law would be constant; far from dealing only with incidents while the ships were in American waters, the Board would be regularly applying the shifting standards of its own decisions, and those of American courts and American legislators, to conduct in Honduras, where the bargaining between Empresa and its employees has always taken place; it would be endeavoring to enforce its will on matters that Honduras, with a better claim, regards as for itself to decide. Compare *Vanity Fair Mills* v. *T. Eaton Co., Ltd.*, 234 F. 2d 633, 646-647 (2 Cir.), cert. denied, 352 U. S. 871 (1956)."

The problem of deciding what is in the best interests of the United States in this situation is one for Congress. The complexity of these problems (in the fields of international shipping, international relations, labor, and national defense) to be solved by Congress is apparent from the hearings held before the Subcommittee on the Merchant Marine of the House Committee on Merchant Marine and Fisheries (study of Vessel Transfer, Trade in and Reserve Fleet Policies) 85th Cong., 1st Sess. (1957) (hereinafter cited as House Hearings), and before the Subcommittee on Merchant Marine and Fisheries of the Senate Committee on Interstate and Foreign Commerce (Hearings on S. 1488, Ship Transfers to Foreign Flag) 85th Cong., 1st Sess., 1957, hereinafter cited as Senate Hearings) at which a number of

representatives of various interested parties testified.[5] This Court does not have the function nor the facilities for examining all relevant considerations of public policy and deciding which should prevail. The briefs submitted by petitioners present arguments more properly addressed to the legislature. The brief *amicus* filed by the AFL-CIO is devoted almost completely to an analysis of the policy considerations involved and even quotes from recent hearings before Congressional Committees at which these policies were enunciated. It is difficult to conceive of more dramatic proof that the problem here presented (in the absence of an expression of Congressional intent) is a legislative one.

Despite the fact that the resolution of these conflicting interests is a legislative problem, the NMU brief begins

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[5] Testimony was given by Clarence Morse, Maritime Administrator, to the effect that wage-costs under a foreign flag were substantially lower than those under an American flag (House Hearings, pt. 1, pp. 140 ff., 160); and by representatives of American shipping companies in the Senate Hearings (see, e.g. the testimony of James C. Anderson, Executive Secretary of the American Tramp Shipowners Association, p. 229, and of Albert E. Kihn, President of California Shipping Co., at p. 116) who testified with reference to the difficulty faced in meeting competition from foreign flag vessels. The House Subcommittee also heard testimony from representatives of the Department of Defense with reference to the effect of foreign flag registration on national security (House Hearings, pt. 2 p. 552 ff.). Those who appeared for the Department included the Hon. Thomas S. Gates, Jr., Secretary of the Navy; J. M. Will, Vice Admiral, USN, Commander, MSTS; Rear Admiral Albert G. Mumma, Chief, Bureau of Ships; and Howard L. Collins, Rear Admiral, USN, Assistant Chief of Naval Operations (Logistics). Robert Hill, Assistant Secretary of State, testified before the Senate Hearings concerning the problem of international relations involved (Senate Hearings, p. 219). Finally, the House Subcommittee heard testimony from Hoyt S. Haddock, Executive Secretary of the AFL-CIO Maritime Committee, and Harry E. O'Reilly, Executive Secretary-Treasurer of the Maritime Trades Department, AFL-CIO, as to the adverse effect the employment of foreign seamen had on the working conditions of American seamen. House Hearings, pt. 2, p. 684 ff.).

with a presentation to show that American seamen are prejudiced by the employment of foreign seamen at lower wages. Of course, a similar presentation could be made to show why it is necessary to keep shipping costs low in order to compete in foreign commerce. The problem described by NMU is not unique to shipping but one which is present wherever foreign labor is employed. The NMU appears to contend that the LMRA is designed to improve employment conditions here by improving them abroad. There is no indication of such a Congressional intent. As this Court held in *Benz*, these economic and political problems are for the consideration and determination of Congress and not for the courts.

4. *A "contacts" test is inappropriate.*

Petitioners urge that the Board should be empowered to weigh all the competing interests or contacts and decide whether as a matter of policy the LMRA should apply on a given state of facts to foreign shipping. The decision of this Court in *Lauritzen* v. *Larsen*, 345 U. S. 571 (1953) is said to support this contention and, indeed, the Board so ruled.

Lauritzen, however, involved the application of the Jones Act (46 U. S. C. §688), dealing with the imposition of tort liability, to foreign shipowners for injury to seamen on ships flying a foreign flag. Isolated instances of recovery for personal injuries may justify a weighing of various contact points but a radically different situation is presented in the constant supervision and intrusion upon the internal affairs of a foreign vessel that comes with applying the comprehensive regulatory provisions of the LMRA. Courts have allowed Jones Act recovery to individual seamen employed aboard foreign flag vessels

on the theory that a varying standard of tort liability does not interfere with the internal order of the particular vessel involved. See, *e.g.*, *Gerradin* v. *United Fruit Co.*, 60 F. 2d 927 (2d Cir.), *cert. den.* 287 U. S. 642 (1932), where it was stated at p. 929 "[M]atters of 'internal management' are not involved in an action by a seaman to recover damages for injuries suffered through the negligence of the shipowner."

Thus it has been concluded by one commentator that ". . . usurpation of applicable tort law does not have an impact on the principles of comity comparable to application of the labor acts.

And special humanitarian considerations may motivate a court to allow speedy recovery, under American law, to seamen convalescing in the United States and lacking ready access to a forum in the flag state." Note, *The Effect of United States Labor Legislation on the Flag-of-Convenience Fleet*, 69 Yale L. J. 498, 511 (1960).

The Jones Act was enacted against a background of admiralty law in which injured seamen were considered "wards of the Admiralty" and every possible provision was made for their welfare. See 4 Benedict, *Admiralty* (6th ed. 1940), at p. 282. Historically one of the problems which faced an injured seaman far from home was ready access to the Admiralty Court for compensation for his injuries. 1 Benedict, *Admiralty* (6th ed. 1940), at p. 252. In *Lauritzen*, Mr. Justice Jackson emphasized this factor (345 U. S. at pp. 589-590). The policies behind the Jones Act are different from those behind the LMRA.

The policies and scope of the LMRA are quite different and far more complex than those behind the Jones Act. Application of the "contacts" test, a useful tool in reconciling conflicts of law in specific fact situations, does not fit the shifting sands of maritime commerce. Seagoing

vessels, and particularly ships available for charter, may ply between certain ports in one year and between entirely different ports in the next. Ownership interests change from time to time. Frequent reevaluation of "points of contact" would have to be made from time to time in order to determine whether the LMRA or the labor laws of some other country applied.

A second consideration, emphasized by this Court and by Congress, is the practical necessity of having a single governmental regulation of labor management relations. (*Bethlehem Co.* v. *State Board*, 330 U. S. 767 (1947)). The Board's approach, as applied to maritime commerce, would mean changes in the regulation of labor management relations aboard seagoing vessels from port to port as different governments assumed the regulatory function. Such an intolerable result, desruptive of international commerce cannot have been intended by Congress.

The only test that gives the required certainty to applicable law in maritime commerce is the ancient and universally applied principle of the Law of Nations, that the law of flag and registry shall govern with respect to the internal affairs of seagoing vessels.

Honduran law prevails even if the "Contacts" approach is used.

However, even if a substantial contacts test were applied in this case, the Board should not have asserted jurisdiction. In *Lauritzen*, Mr. Justice Jackson listed seven elements to be considered for the purposes of determining the applicability of the Jones Act. They were: (1) Place of wrongful act; (2) Law of the flag; (3) Allegiance or domicile of injured person; (4) Allegiance of defendant shipowner; (5) Place of contract; (6) Inaccessibility of foreign forum and (7) Law of the forum. If these elements are applied to this case it is clear that Honduran

law should apply to the labor management relations aboard these vessels. The vessels are Honduran flag vessels, the seamen are, with one exception, Honduran, they are employed in Honduras under shipping articles executed there, the present collective bargaining agreement was entered into under Honduran law with a Honduran union, the employer is a Honduran corporation and its officers and directors reside in Honduras. For the past twenty years, labor relations between Empresa and its employees have been regulated by the laws, the courts, and administrative agencies of the Republic of Honduras. As Judge Friendly pointed out, the United States contacts "are substantially outweighed for the purpose here at issue, by Honduras' interests" (R. 77).

The flag alone, however, should be controlling here. As Mr. Justice Jackson said ". . . the weight given to the ensign overbears most other connecting events in determining applicable law" (345 U. S. at 585) and it is "of such weight . . . that it must prevail *unless some heavy counterweight appears*", 345 U. S. at 586 (emphasis added). Such heavy counterweight could only be found in some compelling policy underlying the statute in question and which is clearly expressed therein. An analysis of the policy underlying the LMRA, however, leads to the conclusion, stated in *Benz*, that it was intended to apply essentially to domestic United States employment relationships in an effort to improve employment conditions in the United States.

Petitioner NMU appears to contend that Congress intended that the wages of foreign workers should be raised so that domestic salaries and employment will be strengthened. However such a policy would dictate the application of this LMRA to a United States employer who hires workers who work for it abroad. This in effect constitutes a wage tariff on foreign labor. There is no indica-

tion that Congress had any intention to indirectly improve working conditions in the United States by raising wages abroad.

Congress did state an intention to remedy, through the LMRA: "The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association. . . ." (29 U. S. C. §151).

Obviously Congress was not concerned with such inequality as it may exist in foreign countries but only as it exists in the United States. The problem with foreign employers and foreign employees is whether any "inequality" between them is a concern of the United States or a concern of a foreign country. The relevant facts here are: (i) place of primary employment of the employees and (ii) the situs of the essential personnel and management functions of the employer. In this case Empresa's employees are employed on Honduran vessels and spend most of their time on the high seas. The personnel and employment functions of the employer are performed in Honduras. Control over where the vessels call is exercised by United Fruit in the same manner in which it would exercise such control over any ships it time chartered. Under these circumstances it is apparent even on a "contacts" approach that the LMRA should not apply.

POINT II.

The Board's action in directing a representation election among respondent's foreign seamen on its foreign flag ships, if authorized by the LMRA, would be unconstitutional.

In the discussion to follow, we have assumed, *arguendo*, that Congress intended the LMRA to apply here and so declared with unmistakable clarity. On this assumption, we submit that for the reasons which follow, the Congress would have exceeded its constitutional powers.

A. Article I, Section 8 of the United States Constitution.

Legislation purporting to regulate labor relations in a foreign land, would, we submit, be beyond the constitutional powers of Congress. This would also be true with respect to labor relations on a foreign flag ship when beyond the territorial limits of the United States, and particularly so where shipowner and crew are also foreign.

Article I, Section 8 of the United States Constitution provides:

> "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

This grant of power extends to the full scope of the national sovereignty over matters of commerce which affect the United States. In *Gibbons* v. *Ogden*, 9 Wheat. (22 U. S.) 1 at pp. 193-194 (1824) Chief Justice Marshall held:

> "It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse between the United States and foreign

> nations. No sort of trade can be carried on between this country and any other, to which this power does not extend."

There are, however, limits upon the power of Congress to regulate commerce with foreign nations, which are inherent in the very nature of the sovereignty being exercised. Article I of the Constitution assigns the "legislative powers herein granted" to Congress. But the People did not and could not assign powers which they did not have. To grant power to regulate contracts between foreign employers and foreign employees on board foreign flag ships impliedly recognizes the same power in another sovereign to regulate such contracts between American workers and American employees on American flag ships. Such power would amount to a limitation on the full and total sovereignty of the People within the United States' own territory. The framers of the Constitution obviously did not envisage any such limitation on the power of the People within their own land. They recognized that the power of the sovereign to extend its influence beyond the borders of its own territory exists in the context of the Law of Nations.

The Constitution must be read in light of the law of nations. *Respublica* v. *DeLongchamps*, 1 Dall. (1 U. S.) 111, 116 (Oyer & Terminer Phila., 1784); *Penhallow* v. *Doane's Administrators*, 3 Dall. (3 U. S.) 54, 81 (1795).

The framers of the Constitution were well aware of the problems involved in the extraterritorial exercise of national sovereignty. Jay, in *The Federalist* No. 3 (Hamilton ed. 1873, p. 61), stated:

> "It is of high importance to the peace of America, that she observe the laws of nations towards all these powers [maritime nations]; and to me it appears evident, that this will be more perfectly and pune-

> tually done by one national government, than it could be either by thirteen separate states, or by three or four distinct confederacies."

See also, Hamilton, in *The Federalist No.* 80 (Hamilton ed. 1873, pp. 588-590).

This Court also has held that the law of nations is incorporated into the municipal law of the United States, to be applied as it comes in issue. *The Peterhoff*, 72 U. S. (5 Wall.) 28, 57 (1866).

In *The Scotia*, 81 U. S. (14 Wall.) 170, 187 (1871), this Court held that *The Scotia* was without fault in a collision in following the international rules of the road, and stated:

> "Undoubtedly, no single nation can change the law of the sea. That law is of universal obligation, and no statute of one or two nations can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power, but because it has been generally accepted as a rule of conduct."

See also, *Hilton* v. *Guyot*, 159 U. S. 113, 163 (1895), and *Banco Nacional De Cuba* v. *Sabbatino*, 193 F. Supp. 375 (S. D. N. Y. 1961), *affirmed* 307 F. 2d 845 (2d Cir. 1962).

International law as well as the constitutional law of the United States recognizes the limitations inherent in the concept of sovereignty. It is well recognized that one nation's attempt to regulate economic affairs which are more properly the concern of another nation is deemed an affront to the sovereignty of that other nation. In 1 Oppenheim, *International Law* (Lauterpacht ed. 1955), at p. 288 it is stated:

> "§ 125. The duty of every State itself to abstain, and to prevent its agents and, in certain cases, sub-

> jects, from committing any act which constitutes a violation of another State's independence or territorial or personal supremacy is correlative to the corresponding right possessed by other States. It is not feasible to enumerate all such actions as might constitute a violation of this duty. But it is useful to give some illustrative examples. Thus, in the absence of treaty provisions to the contrary, a State is not allowed to interfere in the management of their internal or international affairs, nor to prevent them from doing or to compel them to do certain acts in their domestic relations or international intercourse."

Accord, 1 Hyde, *International Law* 640 (1947); 1 Hackworth, *Digest of International Law* 51-52 (1940).

Since the Constitution was drawn against the background of the law of nations, it must be concluded that the limitations imposed by this law also limit the power of Congress to regulate economic relationships created and existing within another country.

This limitation has been well expressed in the analogous situation of the extraterritorial application of the Lanham Act, 15 U. S. C. §§1051 *et seq.* In *Brown* v. *Duchesne*, 19 How. (60 U. S.) 183, 195 (1856), the Court held that the use by a foreign ship in a port of the United States of a device patented in the United States was not a violation of the patent law:

> "The patent laws are authorized by that article in the Constitution which provides that Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. The power thus granted is domestic in its character, and necessarily confined within the limits of the United States. It confers no power on Congress to regulate commerce, or the vehicles of commerce, which belong to a

> foreign nation, and occasionally visit our ports in their commercial pursuits."

The constitutional question was raised and not decided in *Vanity Fair Mills, Inc.* v. *T. Eaton Co.*, 234 F. 2d 633 (2d Cir.), *cert. den.* 352 U. S. 871 (1956), at p. 644 in which the Court stated:

> "Here again, we think that these benefits are limited in application to within the United States. It is true that they are not expressly so limited, but it seems inconceivable that Congress meant by this language to extend to all eligible foreign nationals a remedy *in the United States against unfair competition occurring in their own countries.* Moreover, if §44 were so interpreted, it would apply to commerce which is beyond the Congressional power to regulate, and a serious constitutional question would be created."

Thus, Congress is without power to regulate labor-management relations aboard foreign flag vessels, at least when these vessels are beyond the territorial limits of the United States. By firmly settled principles of international law, universally respected by all nations long before the founding of this Republic, and to this day, the internal affairs of seagoing vessels may be regulated only by the laws of the flag state. The framers of the Constitution gave no power to Congress to override this basic principle of the law of nations.

B. Fifth Amendment to the United States Constitution.

Regulation by Congress of the contractual relationship created in Honduras between Empresa and its foreign employees aboard its foreign flag ships, would violate the provisions of the Fifth Amendment of the United States Constitution. The Fifth Amendment provides in part:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *."

Attempts by individual states to extend their powers beyond their own borders have on numerous occasions been held repugnant to the due process clause of the Fourteenth Amendment. *Miller Bros. Co. v. Maryland*, 347 U. S. 340 (1954); *Hartford Acc. & Ind. Co. v. Delta & Pine Land Co.*, 292 U. S. 143 (1934); *Home Insurance Company v. Dick*, 281 U. S. 397 (1930).

This fundamental constitutional principle restricting the action of individual states applies *a fortiori* to the relationship between the United States and nationals of foreign countries. If it is violative of due process to permit a state to regulate persons and activities in other states within the United States, then it is violative of due process to permit the federal government to regulate persons and activities which have little or no relation to the United States. It is most imperative that these limitations be observed in the international realm because of the delicate questions of international law and relations which are raised by the extraterritorial application of domestic United States statutes to persons and activities located in foreign countries.

It is fundamentally unfair to subject private individuals to totally unexpected applications of law. Persons in Honduras do not contract with respect to the law of the United States any more than persons in Mexico contract with respect to the laws of Texas. Furthermore, even as Texas is subject to the overriding power of the Federal Constitution, the United States, as demonstrated above, must respect the rights and duties imposed by the Law of Nations. In light of these considerations, it is a denial of due process of law under the Fifth Amendment to regulate labor-management relations on these foreign vessels.

C. Section 2 of Article II of the United States Constitution.

Section 2 of Article II of the Constitution grants to the Executive Department the function and the power as the sole organ of the federal government in the field of international relations. *U. S.* v. *Curtiss-Wright Export Co.*, 299 U. S. 304, 319 (1936); *U. S.* v. *Belmont*, 301 U. S. 324 (1937); *U. S.* v. *Pink*, 315 U. S. 203 (1942).

The action proposed to be taken by the Board under the Decision and Direction of Election dated November 15, 1961 infringes upon the functions and powers exclusively granted to the Executive Department of the United States Government to conduct the foreign affairs of the United States by disregarding the requirements of the Honduran treaty, well settled principles of international law, and the expressed disapproval of the Department of State. (R. 85)

This interference with the policy of the Executive Department has already resulted in an official note of protest from His Excellency Celeo Davila, Ambassador from Honduras to the United States, to His Excellency Dean Rusk, Secretary of State of the United States, objecting "respectfully, but firmly" to the action taken by the Board in this matter. (Appendix C to this brief.)

POINT III.

The District Court had jurisdiction of this action and power to issue injunctive relief.

NMU's contention that the District Court lacked jurisdiction to entertain this suit is based upon a narrow and unwarranted construction of this Court's decision in *Leedom* v. *Kyne*, 358 U. S. 184 (1958). There is no need to repeat here the thorough discussion of the jurisdictional points made by Judge Friendly below (R. 64-70).

Basic jurisdiction of the action rested on 28 U. S. C. §1337, giving the District Court jurisdiction "of any civil action or proceeding arising under any Act of Congress regulating commerce . . ." without regard to the amount in controversy. The existence of this basic jurisdiction does not appear to be seriously challenged by NMU or the Board. Rather, the contention is that, with certain exceptions, Board orders in representation cases are not reviewable by the courts except as they may be drawn into question in unfair labor practice cases under Section 9(d) of the Act (NMU Br. pp. 15-21).

In the *Leedom* case this Court held that a District Court had jurisdiction to vacate a Board determination in a representation proceeding where the Board had exceeded its powers. The question decided was thus stated by Mr. Justice Whittaker:

> "The sole and narrow question presented is whether a Federal District Court has jurisdiction of an original suit to vacate that determination of the Board because made in excess of its powers." p. 185.

The holding of this Court in *Leedom* is fully applicable to the facts of this case. There the order of the Board deprived the petitioners of "rights assured to them by Congress." Here the Board's order deprived Empresa, a foreign corporation, its foreign workers and their union, of the right to be free of improper regulation by the Board. When the Board acted outside the "boundaries" of the Act as construed by this Court in *Benz*, it violated the statutory mandate as surely as though those boundaries were written into the statutory language.

The further contention by NMU that the District Court was open to a union but not to an employer is a distinction which has no foundation in the history of the Act, is not

made in the cases interpreting it and is not necessitated by any practical considerations. Judge Friendly correctly concluded that there is no rational basis for such a distinction (R. 69).[5]

Finally, NMU contends that the holding below created "an entirely new exception to the rule against independent suits in representation cases" (NMU Br. p. 17). Actually the holding is a logical application of this Court's decision in *Leedom*. In both cases, the Board acted beyond its powers and equitable relief thus became appropriate. Moreover, as Judge Friendly pointed out below, it is at least as important that the Board not exceed its jurisdiction in the delicate field of international relations as in purely domestic situations involving United States employers and United States employees.

Surely the orderly administration of justice requires that where an administrative agency has exceeded its delegated powers, and delicate relations with foreign nations are involved, the Federal courts should exercise their power to restrain illegal action by the agency before serious damage has been done to the foreign relations of the United States. In these circumstances to hold that the Federal courts are powerless to act until there has been a finding of an unfair labor practice and major damage to international relations has already occurred, would be contrary to the public interest and certainly was not intended by Congress.

A further basis for exercise of the injunctive powers of the District Court is Empresa's contention that its con-

[5] Judge Friendly pointed out that even in the *Leedom* case, the union could have precipitated an unfair labor practice charge. As a practical matter prompt District Court action in this situation does not cause greater delay than to defer court review. See 73 Harv. L. Rev. 84, 219-220 (1959).

stitutional rights would be violated by execution of the order complained of. Where an invasion of constitutional rights is asserted in a representation proceeding, and such claim is "not transparently frivolous", the courts have authority to act under *Fay* v. *Douds*, 172 F.2d 720 (2d Cir., 1949).

It follows that the District Court had jurisdiction to entertain this action and the issuance of appropriate injunctive relief to restrain the exercise of unauthorized action by the Board was proper.

Conclusion.

The determination made by the Court of Appeals was correct and should be affirmed. We respectfully submit, however, that affirmance should be grounded in the well settled principle that the law of the flag governs the internal affairs of seagoing vessels. Adoption of the "contacts" approach while requiring affirmance here will serve no useful purpose, either public or private, in the long run, and would inevitably lead to confusion, uncertainty and chaos in international trade and relations.

THE ORDER APPEALED FROM SHOULD BE AFFIRMED.

Respectfully submitted,

ORISON S. MARDEN,
Attorney for Respondent.

CHESTER BORDEAU,
WILLIAM D. CONWELL,
CHARLES NELSON BROWER,
WHITE & CASE,
Of Counsel.

November 19, 1962

Appendix A.

CONSTITUTION OF THE UNITED STATES

Article I

* * * * * * *

Section 8. The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, * * *.

Article II.

* * * * * * *

Section 2. [The President] * * * shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments * * *

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LABOR MANAGEMENT RELATIONS ACT, 1947

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 72 Stat. 945, U. S. C. 151, *et seq.*)

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate current business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

* * * * * *

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal

Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * * *

SEC. 9 * * *

* * * * * *

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative define in subsection (a) of this section:

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * * *

(d) Whenever an order of the Board made pursuant to section [10(c)] of this title is based in whole or in part upon facts certified following an investigation pursuant to subsection (e) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section [10] of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

* * * * * *

SEC. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section [8] of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

* * * * * *

(e) The Board shall have power to petition any court of appeals of the United States, * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or trans-

acts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the poceedings, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. * * * Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the * * * Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of Title 28.

TREATY

Treaty of Friendship, Commerce and Consular Rights between the United States and Honduras dated December 7, 1927, 45 Stat. 2618:

ARTICLE 10:

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

. . . . . .

ARTICLE 22:

A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit.

. . . . . .

Appendix B.

The contents of this appendix are offered only if the Court should conclude that reference may be made by counsel to the transcript and exhibits before the Board, which were not before the courts below.

The brief filed by NMU contains a number of references to the record before the Board, as well as arguments not supported by that record and which were in fact rejected by the Board. For example, at pages 9-10, the NMU repeats arguments made before the Board to the effect that "more than 5%, and perhaps as many as 10%, of the unlicensed crew complement are either American citizens or resident aliens (SM 583, Empresa Ex. 25A-O)." It was shown to the satisfaction of the Board that none of the unlicensed seamen is an American and that with four possible exceptions all are non-residents. The complaint in this action so alleges (R. 4) and its allegations stand admitted on the record before the Court.

Again, NMU states (pages 9-10) that "from time to time unlicensed crew members are hired in the United States (SM 428, Empresa Ex. 15A-D). The plaintiff in *Zielinski* v. *Empresa Hondurena de Vapores*, 113 F. Supp. 93 (1953), was hired in the United States." The same contentions were made to the Board and it was shown that no unlicensed seaman was *ever* hired in the United States, e.g., SM 417-418, Empresa Exs. 9, 10, 11, 15A-D, 25A-O). The only "exceptions"—of which the crew list showed 4 instances—involved transfers of a seaman from one Empresa vessel to another Empresa vessel or repatriation of the seamen (SM 539-540). The Board so found (R. 14, fn. 15). The plaintiff in the *Zielinski* case was a third mate, not an unlicensed seaman.

In view of the Board findings, it is unnecessary to discuss other contentions by NMU which were in effect overruled by the Board. However, the following evidence before the Board may be deemed pertinent if that record is to be considered here:

1. Empresa was formed in 1941 as a wholly owned subsidiary of UFCO at the urging of the Honduran Government to develop a Honduran Merchant Marine (SM 78-79, 350).

Basically the Government of Honduras "... wanted a completely Honduran merchant marine" (SM 158). As Mr. Albert E. Carpenter, Comptroller of UFCO, testified:

> "For many years before Empresa was formed, a subsidiary of United Fruit Company [Mayan Shipping Corp.] had operated a great number of Honduran ships. However, the Honduran government were [sic] very anxious to have a true Honduran merchant marine. Under the prior operation there had been seamen of many, many nationalities. They wanted as nearly as possible to have Honduran seamen aboard their vessels, and with our vast interest in Honduras and the pressure that was brought to bear by the Honduran government, we felt it was in the best interest of the United Fruit Company parent and the Tela Railroad Company, who was operating in Honduras, to accede to the wishes of the Honduran government, and accordingly a Honduran corporation was formed which took over the Honduran flag ships and were manned practically entirely by Honduran seamen. (SM 78-79)."

The vessels acquired by Empresa in 1941 had, for many years before, been under the Honduran flag (SM 581; UFCO Ex. 14).

2. UFCO, the sole stockholder of Empresa, searches for the best qualified candidates in electing directors without regard to whether those chosen have served in the employ of UFCO or one of its subsidiaries (SM 393). Thus, qualified individuals who have never been in the employ of UFCO or any of its affiliates have been elected officers of Empresa (SM 398).

3. The principal office of Empresa from 1941 until 1955 was maintained in the Port of Tela, Department of Atlantida, Republic of Honduras (Empresa Ex. 1); in 1955 the main office of Empresa was removed to Puerto Cortes, Department of Cortes, Republic of Honduras, where said office has continuously been maintained to the present date (SM 373, 378-379). Empresa since 1958 has also maintained three offices in the U. S. which husband its vessels while in American ports (SM 559-560).

4. In 1958 alone, Empresa paid taxes estimated to be in excess of 1,000,000 Lempiras ($500,000) to the Republic of Honduras (Empresa Exs. 26, 26-A). During the period 1951 to 1959, Empresa paid 4,627,900 Lempiras in various taxes to Honduras (Empresa Ex. 26). Empresa also reports "to the Honduran government wages paid during the year to officers and crew of Empresa and Balboa vessels" (SM 443). No such reports (withholding tax, etc.) are made to the United States Government.

5. The time charters entered into between Empresa and UFCO, and Balboa and UFCO, are negotiated by representatives of the respective parties (SM 217-218). Time charter arrangements, rather than bare-boat charters, are entered into because the former are desirable from both the owner's and the charterer's point of view (SM 345). The charter rates paid Empresa for its vessels have generally been equal to or greater than that paid for comparable vessels for like duration (UFCO Ex. 11; compare Pet. Exs. 3-A, 3-B, 3-C with UFCO Ex. 13). The covenants, conditions and other terms of the charter parties of the Empresa and Balboa vessels are almost identical to the standard form for time charters used in the shipping industry (Compare Pet. Exs. 3-A, 3-B, 3-C with UFCO Ex. 13).

The time-chartering of a ship is the leasing of a fully manned and provisioned ship, ready to go to sea for a given period of time (SM 187-188). The owner (Empresa) has aboard its own Master, its own officers and its own seamen.

This crew is responsible to the owner, and only the owner has the right to hire, fire, or in any way exercise control over them. Only the owner, as employer, is responsible for "internal management" of his ship, covering all things from collective bargaining to the food put out by the ship's galley (SM 182). Empresa performs all functions normally performed by an employer with respect to the crew serving on its fleet. In line with standard time-chartering procedure, UFCO does not ". . . exercise any direction or any control over the labor relations and personnel policies of the vessels that are time chartered by Empresa to the United Fruit Company" (SM 196-197).

6. Each vessel owned or operated by Empresa calls regularly at Honduran ports. The number of calls per year in 1959 ranged from 2 to 24 calls per vessel. Such has been the case consistently since Empresa's formation in 1941 (SM 570-571). During their stay in Honduran ports, Empresa vessels may spend many days at a time in this country (SM 284). These ships spend at least as much time in Honduras as they do in United States ports (SM 284), and the seamen take their vacations in Honduras "where they have families" (SM 430). The majority of the time spent by ships and seamen is spent on the high seas.

7. Without exception, each unlicensed seaman employed by Empresa on the vessels owned or operated by it has been a non-resident alien of the United States at the time he was initially hired (SM 418-419). Again without exception, every unlicensed seaman employed by Empresa was hired in Honduras and in no other place in the world (SM 418). To gain employment with Empresa, an unlicensed seaman is required to file an application at Empresa's principal office in Puerto Cortes (SM 419). Personnel cards reflecting the employment record of each unlicensed seaman in Empresa's employ are maintained in Puerto Cortes (SM 425). These cards reflect disciplinary action taken against the seamen by Empresa (SM

542-545), as well as transfers between vessels (SM 539), promotions (SM 538) and demotions (SM 545). (Emp. Ex. 15-A, 15-D). They also show that when the Ship's Articles indicate that an unlicensed seaman signed on or signed off at a port other than a Honduran port, such signing on or off resulted either from the seaman being transferred from another Empresa-owned or operated vessel, or from the seaman being repatriated (SM 540).

8. The salaries and wages of the unlicensed seamen, as well as all officers and other employees of Empresa, are paid by Empresa with funds of Empresa (SM 434-435). Moreover the labor relations and personnel offices of the two corporations are completely distinct. The Personnel and Labor Bureau of the United Fruit Company deals solely with the problems of that company (SM 56-57) whereas entirely separate and independent employees and attorneys of Empresa handle the personnel and labor relations issues of that company (SM 374, 432-433, 435, Empresa Exs. 17-20).

9. The owners of the approximately 8,700,000 shares of stock in UFCO live in more than 30 countries (SM 49-50).

Appendix C.

No. 109

November 29, 1961.

His Excellency
DEAN RUSK,
The Secretary of State,
WASHINGTON, D. C.

Excellency:

With special instructions of my Government, I have the honor to call Your Excellency's attention to the decision rendered by the National Labor Relations Board, an Agency of the Government of the United States of America, in the city of Washington, in the case No. 2-RC-10379, entitled "United Fruit Company and National Maritime Union of America, AFL-CIO," dated November 15, 1961.

In this case the National Maritime Union of America, an American labor organization operating in this country, filed a petition with the National Labor Relations Board, with the final purpose to represent the unlicensed seamen working on vessels owned and operated by "Empresa Hondureña de Vapores, S. A.", a Honduran corporation recognized by Decree No. 1383 issued by the Ministry of Interior, Justice, Sanitation and Public Welfare of Honduras, on March 28, 1941, with principal office at Puerto Cortés, Republic of Honduras. The National Labor Relations Board decided favorable the petition of said Union.

My Government has taken notice of this decision with very great concern, because the Board has paid no consideration to the fact that all those vessels fly the Honduran flag and are registered in the Honduran registry, and has also ignored the Treaty of Friendship, Commerce and Consular Rights between Honduras and United States, signed at Tegucigalpa, Honduras, on December 7, 1927.

Article X of the Treaty provides that merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

The National Labor Relations Board by asserting jurisdiction over the Honduran seamen aboard vessels carrying the Honduran flag has violated this provision that considers as vessels of Honduras those flying its flag.

It has also violated Article XXII of said Treaty which reads in part: "A Consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in case, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit".

The Articles X and XXII of said Treaty are very clear and there is no doubt that wages and contracts are matters dealing with internal order of the vessels, and are therefore subject exclusively to the laws of the State of registry and flag.

This decision has also ignored the following facts that were alleged during the proceeding: that the seamen employed by the Empresa Hondureña de Vapores, S. A., on its vessels are Honduran nationals and citizens of Honduras, hired in Honduras, with domicile in that country; that the seamen and the other employees of Empresa Hondureña de Vapores are subject to the laws of Honduras, and under the jurisdiction of the Honduras labor authorities; that the vessels owned and operated by Empresa Hondureña de Vapores, S. A., as well as their crews are subject to the Merchant Marine Law of Honduras; that those ves-

sels regularly carry tonnage to and from Honduras and that said Empresa according to Honduras law is required to pay substantial income and other taxes to Honduras; that said Empresa Hondureña de Vapores, S. A., is the sole employer of the unlicensed seamen working on its vessels and that the United Fruit Company, an American Corporation, has nothing to do in negociating collective bargaining with Sociedad de Marineros de Honduras, a labor union representing the unlicensed seamen; that the United Fruit Company has nothing to do with the firing, promotions, assignment, discipline and other elements of control over the seamen; and that for 19 years since the inception of Empresa Hondureña de Vapores, S. A., in 1941, said Empresa has necotiated every collective bargaining agreement with the Honduran union, including the labor contract presently in existence.

I want to inform your Excelleney the Secretary of State that according to the Labor Law of Honduras "Código de Trabajo de Honduras", Honduras has exclusive jurisdiction over the relations of employers and employees working in its territory and in its ships flying its flag. This jurisdiction can not be renounced and the Honduras Government can never accept that a foreign Union like the National Maritime Union of America or any other represent the seamen of Honduras that work on vessels of Honduran flag. According to our Labor Laws those seamen are represented by a Honduras Union properly established in that country and regulated by the National Labor Laws.

It is a well established principle of International Law that a vessel is subject exclusively to the law of the State of registry and whose flag it flies regardless of ownership and accordingly a domestic statute should never be construed to violate binding and effective principles of international law.

It is a fact that the American labor laws has been construed so as to limit its application to seamen on American flag vessels over which Congressional power is undoubted.

International Law recognizes that every State determines the nationality of vessels flying its flag through its domestic registration laws and that registration of vessels of foreign ownership may be permitted, and International Law recognizes the flag and registry of such vessels with the same force as that of any other vessel of the same flag and registry.

It also recognized that a vessel on the high seas and in a foreign port is subject to the exclusive jurisdiction of the State of registry apart from powers not relevant here, that every State has over foreign vessels in its waters.

I am perfectly aware that His Excellency the Secretary of State is well acquainted with all these principles, nevertheless I consider that in this occasion I should point out said principles.

In view of the above considerations, and on behalf of my Government, with much regret, I want to protest, respectfully, but firmly against said decision of the National Labor Relations Board.

In taking this action, my Government, knowing that Your Excellency's Government is so deeply interested in the fulfilment of the international treaties, hopes that Your Excellency will take the appropriate measures to remedy this situation.

I avail myself of this opportunity to renew to Your Excellency, the assurances of my highest consideration.

CELEO DAVILA
Ambassador of Honduras.